



California Fair Political Practices Commission

April 13, 1988

Michael F. Dean
Office of the City Attorney
City of Roseville
311 Vernon Street
Roseville, CA 95678

Re: Your Request for Advice
Our File No. A-88-118

Dear Mr. Dean:

You have requested advice on behalf of Chris Hays about application of the conflict-of-interest provisions of the Political Reform Act (the "Act")^{1/} to Mr. Hays' duties on the City of Roseville Planning Commission.

QUESTION

Mr. Hays is an employee of a local architectural firm that designs mostly commercial and some multi-family residential buildings. Is Mr. Hays disqualified from participating in decisions to adopt specific plans for the southeast, northwest, and north central areas of Roseville?

CONCLUSION

Mr. Hays is disqualified from participating in decisions about the northwest and north central specific plan areas because the effects of the decisions on his employer would be foreseeable and material. We are not providing advice about the southeast area because you have informed us that the planning commission already has approved amendments to that area's specific plan.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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FACTS

Mr. Hays is a member of the Roseville Planning Commission. He also is an employee of Williams & Paddon, Inc., a closed corporation that does architectural work in Roseville. Mr. Hays is a senior vice-president in charge of marketing and administration. Each year Mr. Hays also earns a stock option to buy up to 2 percent of his employer's stock for a total of 10 percent after five years. Mr. Hays has not exercised the stock option.

Williams & Paddon does architectural work mainly for office, commercial, and multi-family residential projects. About 40 percent of its work is in the City of Roseville. The firm's market share of all the architectural work in the city is about 20 percent.

On April 14, 1988, the planning commission will be considering approval of specific plans for two undeveloped areas: (1) the 1,547-acre Northwest Roseville Specific Plan ("Northwest Plan") and (2) the 2,396-acre North Central Roseville Specific Plan ("North Central Plan").^{2/}

The Northwest Plan permits mainly residential development, including some multi-family housing, and some neighborhood commercial development. Three developers own most of the Northwest Plan area. Seven smaller property owners own land that already has been parceled. None of the three major developers has contracted with Williams & Paddon in the past. Nevertheless, if the specific plan is approved, Williams & Paddon expects to get 20 percent of all the architectural work needed by developers of the Northwest Plan area. A 20-percent market share would amount to an increase in gross revenues of more than \$10,000.

Two developers own most of the land in the North Central Plan area, which will have major commercial development and some residential projects, including multi-family housing.

^{2/} In a telephone conversation on April 6, 1988, you told me the planning commission had approved a third specific plan, the Southeast Roseville Specific Plan, on March 31, 1988. This decision was made without Mr. Hays' participation.

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Both developers have applied for approval to develop a regional mall. The planning commission will approve only one mall site. Nevertheless, the developer without a mall site would be able to develop commercial property around the other developer's mall. One of the developers is a major client of Williams & Paddon. In the past year, the firm has done some preliminary architectural work for the developer's proposed projects in the North Central Plan area.

ANALYSIS

Section 87100 prohibits a public official from making or participating in making a governmental decision in which the official knows or has reason to know he has a financial interest. An official has a financial interest in a decision that would have a foreseeable material financial effect, different from the effect on the general public, on a source of \$250 or more in income promised to or received by the official within 12 months before the decision.^{3/} (Section 87103(c).)

Mr. Hays is a public official. (Section 82048.) Williams & Paddon is a source of income of more than \$250 and, thus, is an economic interest for Mr. Hays. Because Williams & Paddon is a source of income, Mr. Hays is disqualified from participating in a decision that would have a reasonably foreseeable material financial effect on his employer.^{4/}

You have requested advice about whether Mr. Hays may participate in decisions about the three separate specific plans. Since your original request, the planning commission has approved changes to the Southeast Roseville Specific Plan ("Southeast Plan"). As previously stated, because this decision is no longer at issue, we will not comment on it.

^{3/} You have not given us any facts nor requested any advice about Mr. Hays' other economic interests. Therefore, our analysis deals only with the factual situation you have presented.

^{4/} If Mr. Hays owned stock worth at least \$1,000 in Williams & Paddon, Mr. Hays also would have an investment interest in Williams & Paddon. Nevertheless, Mr. Hays has not exercised his stock option. Therefore, he does not have an investment interest in the company.

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Nevertheless, we hope our analysis of the other two specific plan decisions will give you some guidance on how to deal with future Southeast Plan decisions.

Foreseeability

The effect of a decision is foreseeable if there is a substantial likelihood it will occur. An effect does not have to be certain to be foreseeable. If an effect were a mere possibility, however, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, 206-207, copy enclosed; see Downey Cares v. Downey Community Development Com. (1987) 196 Cal. App.3d 983, 991, and Witt v. Morrow (1977) 70 Cal. App.3d 817.)

Materiality

For the purpose of disqualification, the effect of a decision also must be material. Regulation 18702.2(g) (copy enclosed) provides that the effect of a decision is material if:

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or
- (2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or
- (3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g)(1)-(3).

We assume Williams & Paddon would be covered by subdivision (g).^{5/}

^{5/} Subdivision (g) applies to business entities not qualified for listing and not listed on the New York or American Stock Exchanges, or the National Association of Securities National Market List, and not qualified for public sale pursuant to California Corporations Code Section 25110. Please tell us if you believe a different subdivision applies to Williams & Paddon.

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Northwest Plan Area

None of the three major developers in the Northwest Plan area has contracted with Williams & Paddon in the past. Nevertheless, if the city approves the Northwest Plan, Williams & Paddon expects to receive 20 percent of the architectural design work needed for development projects in the area. Twenty percent of the market would amount to more than \$10,000 in gross revenues for Williams & Paddon.

Since a planning commission decision about the Northwest Plan would increase or decrease Williams & Paddon's gross revenues for a fiscal year by more than \$10,000, Mr. Hays would be disqualified from the Northwest Plan decision because it would have a foreseeable and material financial effect on a source of income to him. (Regulation 18702.2(g)(1).) Furthermore, the effect on Williams & Paddon would be different from the effect on the general public. (In re Legan (1985) 9 FPFC Ops. 1; Brown Advice Letter, No. A-83-076, copies enclosed.)

North Central Plan

Williams & Paddon already has done some preliminary architectural design work for one of the two major developers in the North Central Plan area. This area also will have important commercial development. Williams & Paddon expects to continue working on projects for the developer who already is a major client. Therefore, it appears the North Central Plan decision will result in a foreseeable increase or decrease of more than \$10,000 in gross revenues in a fiscal year.^{6/} (See O'Hara Advice Letter, No. I-87-144, copy enclosed.)

Because the decision's effect on Williams & Paddon is foreseeable and will be material, Mr. Hays also is disqualified from participating in decisions about the North Central Plan.

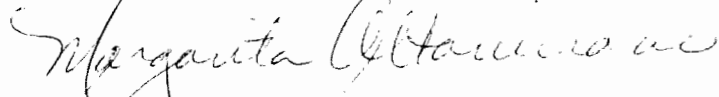
^{6/} Please let me know if you have facts that would lead to a contrary conclusion.

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I hope this letter provides you with sufficient advice.
Please call me at (916) 322-5901 if you have any questions
about this letter.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script, reading "Margarita Altamirano".

By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:mk



City of Roseville

Office of the City Attorney

Phone 781-0325
311 Vernon Street
Roseville, California
95678

MAR 21 8 44 AM '88

March 17, 1988

Margarita Altamirano
Counsel, Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, California 95804

Re: Request for Written Advice

Dear Ms Altamirano:

After our telephone conversation of February 23, 1988, I was still left with some degree of uncertainty as to precisely what could and could not be done in the situation faced by one of our Planning Commissioners. As a result, please consider this a formal request for written advice pursuant to Government Code section 83114(b).

FACTS RELATING TO PROPOSALS BEFORE THE CITY:

The City of Roseville is a charter city, governed by an elected five member city council. The council in turn appoints a seven member planning commission. (see generally, Government Code sections 65100, 65101.) Among other things, the planning commission conducts hearings on, and advises the city council regarding, the adoption or amendment of specific plans. (see generally, Government Code section 65450 et seq.)

The undeveloped areas of the City have been divided into specific plan areas. The transition from rural and agricultural uses to more urban uses is made in several steps. First, the land use element of the general plan is amended to provide tentative and contingent urban land use to a specific plan area. The general plan provides that the land use so adopted is tentative and contingent upon the later adoption of a specific plan for the area, specifying in some detail the manner in which the land is to develop, and the execution of a development agreement by which the developer agrees to provide the necessary infrastructure and dedications for the specific plan area. (see generally, Government Code section 65864 et seq.) After adoption of a specific plan, a large subdivision map is applied for which divides the specific plan area into large parcels which match the different types of land use approved by the specific plan. Those

parcels are then rezoned to whatever zones conform to their new land use designations. Development of individual projects will then occur in accordance with the timing specified in the development agreement. Development may or may not be by the same person who proposes the specific plan and executes the development agreement. Due to the size of the specific plan areas, it is common for portions of it to be sold after zoning is obtained. Third persons who purchase in the specific plan area then propose and develop specific projects which are consistent with the specific plan.

The planning commission is in solely an advisory capacity as to adoption of the general plan, specific plan, zoning, and subdivision maps. Normally, the planning commission is the final approving authority at the final stage where a specific project on a specific parcel is involved, unless an appeal to the City Council were to be filed.

Three separate specific plans are currently under review by the City. They are designated as the Northwest Roseville Specific Plan ("NWRSP"), the North Central Roseville Specific Plan ("NCRSP"), and the Southeast Roseville Specific Plan ("SERSP"). The land within them is primarily urban reserve, agricultural, or lower density residential. Adoption of the specific plans will greatly increase the value of the land.

The NWRSP Area consists of approximately 1,547 acres. The NWRSP Area is not owned by one person. Ownership is divided between several major landowners who, for the most part, are known to develop mostly residential projects. The NWRSP as proposed calls for primarily residential land use with some areas of neighborhood commercial development.

The NCRSP Area consists of approximately 2,396 acres. Like the NWRSPA, ownership of the NCRSPA is divided between two major landowners. In this case, however, both owners propose to develop a large amount of commercial land use in addition to residential uses. There are two potential regional mall sites within the NCRSP Area, one owned by each of the major landowners. Only one mall will be approved. The site not designated for a regional mall in the NCRSP is likely to be designated for other commercial uses.

The third specific plan is the SERSP. It differs from the others in that the SERSP has already been adopted, and consists of 650 acres of business and professional uses and residential uses. Parts of it are already developed. At this time, it is proposed that 350 acres (shown as all the area east of Sierra College Boulevard on the enclosure) be added to the SERSP Area, and that residential units currently allocated to sites within the existing SERSP Area be shifted into the new area. The new area, not currently within the SERSP, is already approved for residential development at a lower density. The total number of residential units allowed in the SERSP would not increase if the amendment is approved, but the number of units permitted on the added or new

area would increase. There is one parcel of commercial land use proposed to be added by the amendment. All undeveloped property in the SERSP Area, including all property affected by the proposed amendment (both that having density added and that having density shifted away) are owned by one developer. The business and professional and commercial portions of the existing SERSP are not affected by the proposed amendment.

A schematic of the proposals for all three specific plans is enclosed to give you an idea of the scale and types of land uses proposed.

FACTS RELATING TO THE PLANNING COMMISSION MEMBER:

Chris Hays is a Planning Commission member, and is a senior vice-president of Williams & Paddon, Inc., an architectural firm with its principal place of business in the developed portion of the SERSP Area. (The asterisk on the SERSP schematic designates the approximate location of the Williams & Paddon office.) Williams & Paddon is a closely held corporation with its stock owned by the two principals and their spouses. It currently has 22 employees and does approximately 80+% of its work in the South Placer County Area, with approximately 40+% of its work in the City of Roseville. Williams & Paddon works primarily on projects which are office, retail/other commercial, and multi-family in nature. It has done some industrial projects in the past. Williams & Paddon does very little single family dwelling unit architecture. Williams & Paddon has approximately a 20% market share of architectural work within the City of Roseville in its preferred areas of work.

Mr. Hays has been with Williams & Paddon in his present capacity for approximately one and a half years. He is a salaried employee, but he also has a contract with Williams & Paddon which gives him the option to purchase stock. Each year, he obtains an option to purchase up to 2% of the outstanding stock of Williams & Paddon until after five years service he may purchase up to a total of 10%. The option has not been exercised to date. Mr. Hays' duties do not include architectural services, but instead consist of marketing (approximately 50%), administration (approximately 25%), and development of other business opportunities (approximately 25%).

Williams & Paddon has ties with several of the developers in the specific plan areas. One of the major developers in the NCRSP Area has been a major client of Williams & Paddon in the past year. In addition, Williams & Paddon has done some preliminary architectural work on that developer's potential projects located in the NCRSP Area. The owner of the SERSPA has also been a major client of Williams & Paddon. Williams & Paddon has designed several of the buildings which currently exist in the developed portion of the SERSP Area. It is anticipated, however, that the one commercial site in the amended portion of the SERSP would not be developed by that developer. Williams & Paddon does not have any particular ties with the NWRSP developers. To the extent that

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there is commercial development in that specific plan, it is assumed that Williams & Paddon would get its "market share" of that work.

QUESTION PRESENTED:

All three specific plans are either in, or heading for, the public hearing process at this time. Mr. Hays has requested advice from you as to his obligations to withdraw from any one or more of the specific plans.

Because of the timing of the hearings we would appreciate your response as quickly as possible. Thank you for your kind cooperation. If there are any questions, please do not hesitate to inquire.

Very truly yours,

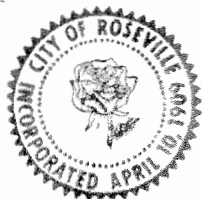


MICHAEL F. DEAN
City Attorney

MFD/mlc

Enclosure

cc: Chris Hays



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Very truly yours,



MICHAEL F. DEAN
City Attorney

MFD/mlc

Enclosure

cc: Chris Hays



California Fair Political Practices Commission

March 23, 1988

Michael Dean
City Attorney
311 Vernon Street
Roseville, CA 95678

Re: 88-118

Dear Mr. Dean:

Your letter requesting advice under the Political Reform Act was received on March 21, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

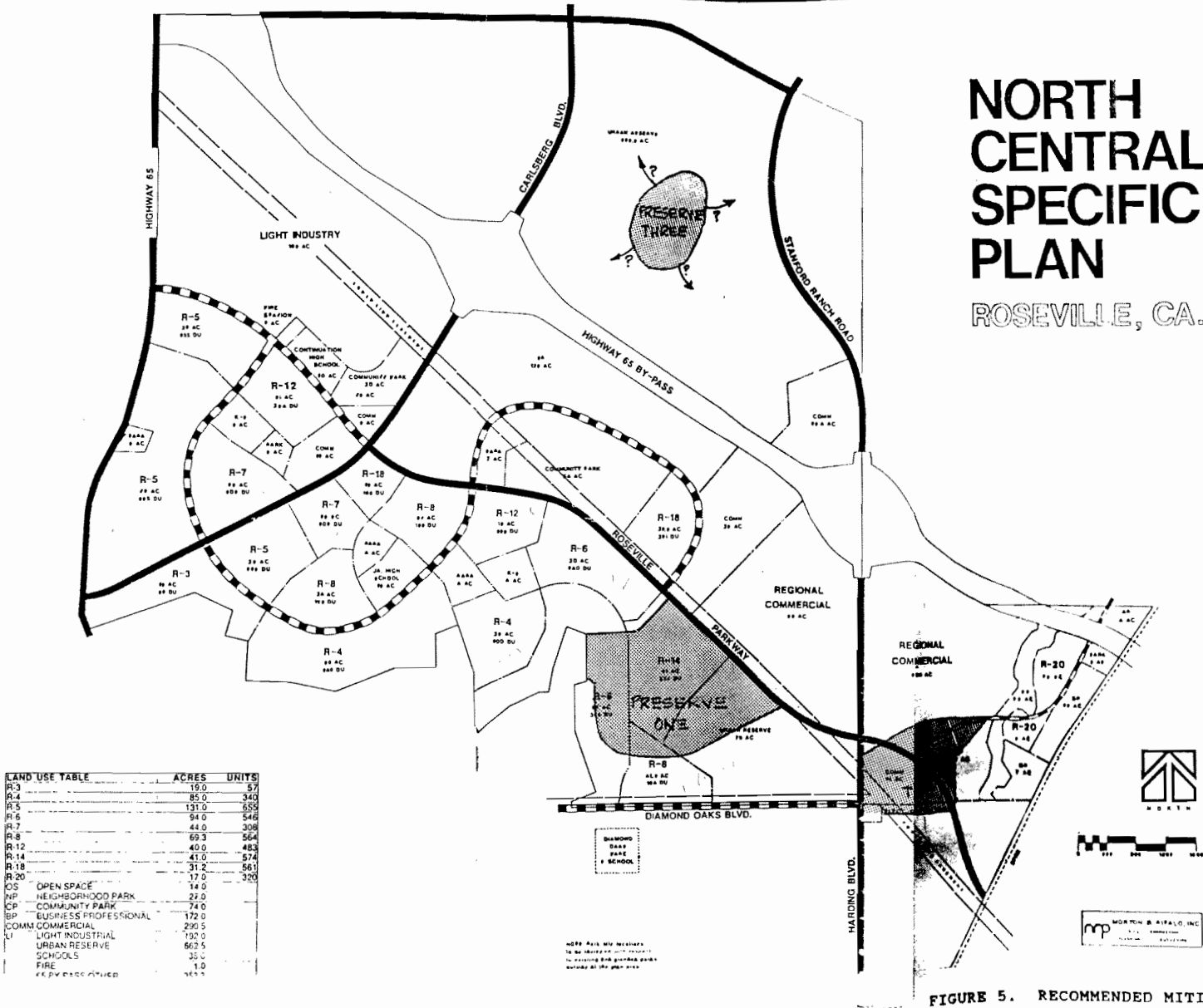
Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh

NORTH CENTRAL SPECIFIC PLAN

ROSEVILLE, CA.



CITY OF ROSEVILLE

1988 AMENDMENT

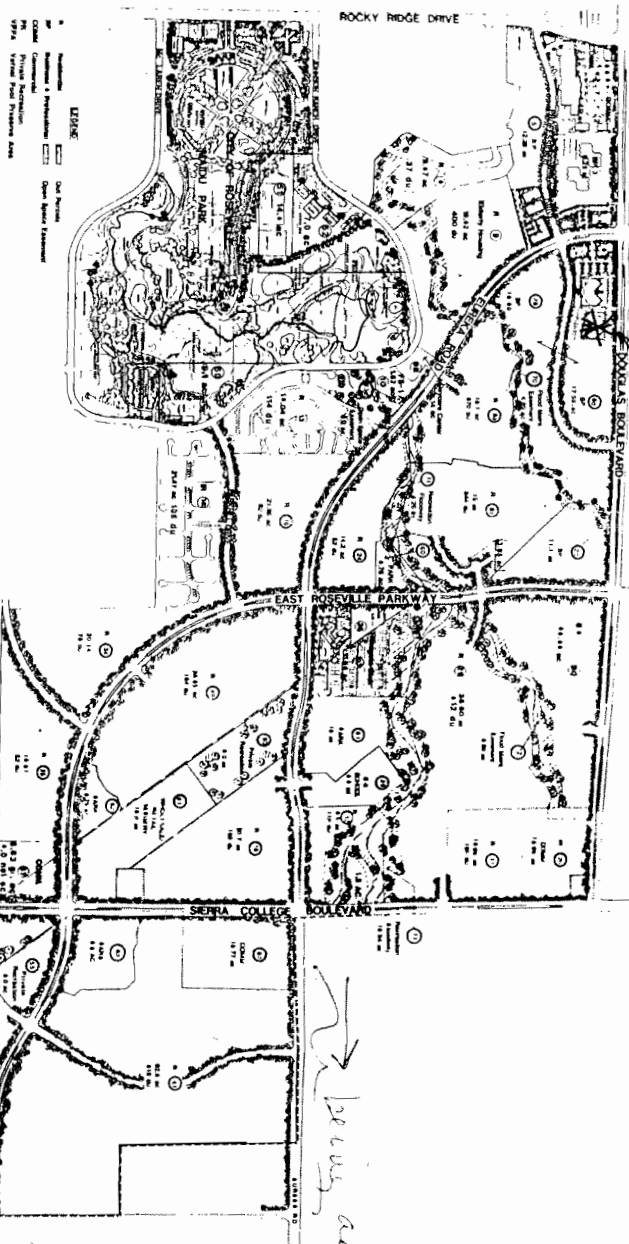
A PLANNED DEVELOPMENT FROM



JOHNSON RANCH

WADE ASSOCIATES

Published • DECEMBER 1990
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Bloomington, California 95011
619 762 8800

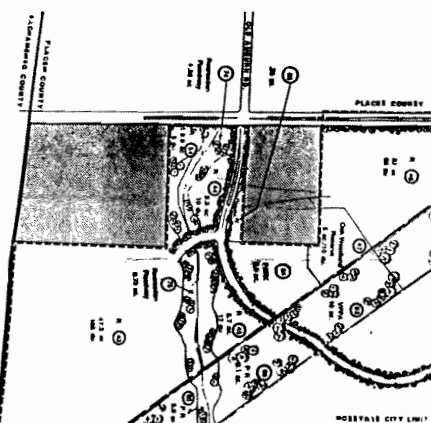


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MARCH 10, 1988

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SCALE IN FEET

Northwest Roseville Specific Plan

Roseville
California

LEGEND:

-  Redefined SWA or new ASWA
-  Area of concentrated pools (other than SWAs and ASWAs)
-  Sensitive plant locations
Four-letter symbol indicates species; number indicates number of populations
Dohu = Downingia humilis
Grhe = Gratiola heterosepala
Dilv = Dichelostemma lacuna-vernalis

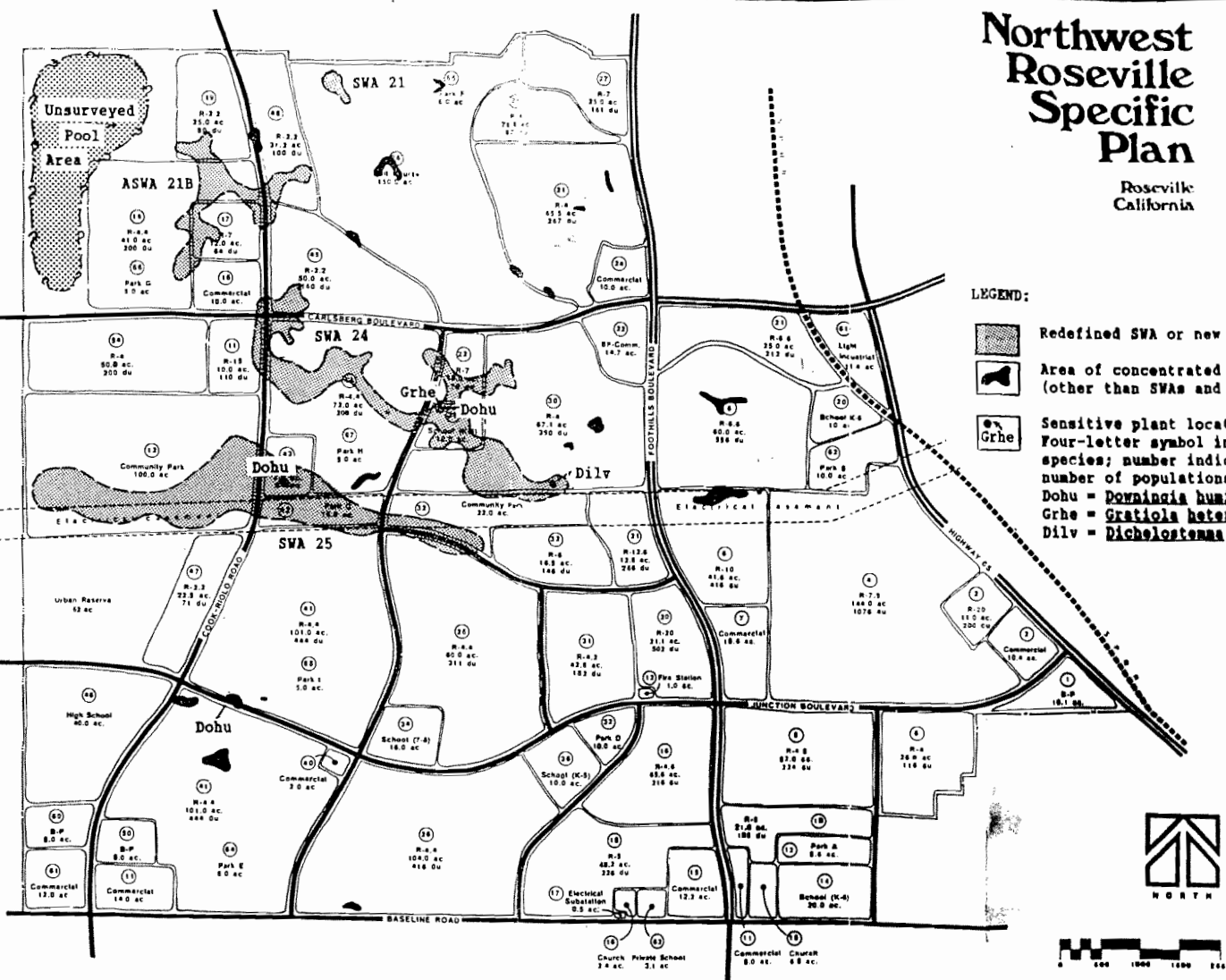


FIGURE 4. DISTRIBUTION OF REDEFINED SWAs, NEW ASWAs, OTHER CONCENTRATIONS OF POOLS, AND SENSITIVE PLANT POPULATIONS WITH RESPECT TO PROPOSED DEVELOPMENT